

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Case No. 1:04-CR-136

Plaintiff,

v.

Hon. Richard Alan Enslen

GERALD FOUSE,

ORDER

Defendant.

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Defendant Gerald Fouse has filed a post-conviction *pro se* Motion seeking disclosure of grand jury transcripts. Defendant was sentenced on June 1, 2005 to 92 months imprisonment after pleading guilty to one count of felon in possession of a firearm. The sentence was affirmed on appeal by recent decision of the Sixth Circuit Court of Appeals in Case No. 05-1847. Defendant's Motion is intended to help him "prove that 2 of the persons that testified [were] unreliable and lied to the Grand Jury." (Mot. 1.)

Pursuant to Federal Rule of Criminal Procedure 6(e)(2), the proceedings of a grand jury are secret. *See also Douglas Oil Co. v. Petrol Stops Northwest*, 441 U.S. 211, 222 (1979). Rule 6(e)(3)(E) does contain an exception for a criminal defendant seeking dismissal of a pending charge based on matters occurring before the grand jury. *See United States v. Fife*, 573 F.2d 369, 372 (1976). Defendant's Motion fails to provide a sufficient factual basis for release of the transcripts under Rule 6(e)(3)(E), as well as the other listed exception to the secrecy requirement. Defendant's Motion also fails to show how any defect in the grand jury process prejudiced him. *See United States v. Mechanik*, 475 U.S. 66, 71 (1986) (requiring showing of prejudice); *United States v.*

Goldsby, 125 Fed. Appx. 687, 690 (6th Cir. Mar. 21, 2005) (rejecting request for grand jury transcript where any defect was harmless).

THEREFORE, IT IS HEREBY ORDERED that Defendant Gerald Fouse's *pro se* Motion for Grand Jury Transcripts (Dkt. No. 55) is **DENIED**.

DATED in Kalamazoo, MI:
February 12, 2008

/s/ Richard Alan Enslen
RICHARD ALAN ENSLEN
SENIOR UNITED STATES DISTRICT JUDGE